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OLC 73-0784

Legislative Counsel



2 July 1973

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It is quite possible that as in the last Congress, the Ervin bill will be passed by the Senate without further committee hearings or request to any Executive agency for their views on the bill. We feel however that for the sake of the record it is important that the Agency submit a formal position to Senator Ervin which is attached (Tab A) for your comment and/or concurrence.

When Senator Ervin introduced his current bill he stated that he had given serious consideration to a full exemption for the Agency but he found it was impossible to do so since he had learned that recently the Agency had denied the right of personal counsel to be present at disciplinary proceedings. We feel we should not let this charge go unanswered and if agreeable to Acting Chairman Symington, we propose to send Attachment B.

John M. Maury
Legislative Counsel



CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OFFICE OF THE DIRECTOR

Honorable Sam J. Ervin, Jr., Chairman
Subcommittee on Constitutional Rights
Senate Committee on the Judiciary
Washington, D. C. 20510

Dear Mr. Chairman:

We wish to submit our views on a bill you introduced on 2 May 1973, S.1688, "To protect the civilian employees of the executive branch of the U. S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of their privacy."

This Agency is deeply committed to enhancing the morale, discipline and professionalism of Agency employees and to the extent that these qualities are dependent upon a proper regard for individual privacy, we are in agreement with the underlying principle of the bill. However, certain of its provisions could seriously impair our capability to protect intelligence sources and methods from unauthorized disclosure.

In this connection, the National Security Act of 1947, as amended, provides:

"... That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;...." (50 U. S. C. 403(d)(3)).

In addition, the Central Intelligence Agency Act of 1949 provides:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall

be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication, or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...." (50 U.S.C. 403g)

S.1688 specifically authorizes adversary procedures which pose a serious paradox--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

Enactment of the bill in its present form would be a most serious obstacle to the effective protection of intelligence sources and methods. The bill would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

I wanted to let you know that I have reviewed the position taken on this legislation by my predecessors, and that I concur in their position that the Agency be exempted from the bill. At your convenience, I would be glad to discuss this further if you wish.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.



CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

Honorable Stuart Symington
Acting Chairman
Committee on Armed Services
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for a report on a statement in the Congressional Record of 2 May 1973 that was made in connection with the introduction of S. 1688, the Federal employees' privacy bill, that:

"Moreover, recent Central Intelligence Agency disciplinary proceedings, in which requests for the presence of counsel or even of colleagues from the Agency have been summarily turned down, make clear the need for the protections of this legislation subject only to certain partial exemptions accorded to these agencies."

It is not the policy of this Agency to summarily reject requests for the presence of counsel or of colleagues in disciplinary proceedings within the Agency. I have had the matter thoroughly investigated and no case has been brought to my attention. If you or any other Senator have knowledge of such a case, I would appreciate being informed.

In the interest of protecting intelligence sources and methods from unauthorized disclosure certain protection has been extended by statutes and executive orders to the Agency in connection with

certain adversary proceedings. As a result, the Agency believes that it has thereby inherited a greater degree of responsibility than normal for assuring that no injustices are done. Moreover, as a practical matter, the discipline and professionalism that the Agency expects of its employees requires a positive attitude to this end.

It is clear that the Congress, in enacting several laws pertaining to the Agency realized the paramount governmental interest in protecting intelligence sources and methods from unauthorized disclosure in cases where this objective may conflict with other important considerations such as Federal employees' rights. However, while an employee cannot as a matter of right insist upon the presence of personal counsel during internal investigative proceedings, we have attempted to accommodate every reasonable request for the presence of personal counsel at disciplinary proceedings.

In fact, even in a situation which does not involve disciplinary action, such as our recent personnel reduction program, personal counsel were present whenever requested.

It is hoped that the above is responsive to your interest and if you would like anything further from us on this, please let me know.